

JUDGE CEDARBAUM

07 CV 3774

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

-----X
Marc MALEK (A46 704 281)

Plaintiff,

-against-

ANDREA J. QUARANTILLO, Director,
New York City District, United States
Citizenship and Immigration Services;
EMILIO T. GONZALES, Director, United
States Citizenship and Immigration Services;
MICHAEL CHERTOFF, Secretary,
Department of Homeland Security;
ALBERTO R. GONZALES, Attorney
General of the United States;
ROBERT S. MUELLER, III, Director,
Federal Bureau of Investigations,

Defendants.
-----X

MAY 14 2007

COPY RECEIVED
MAY 14 2007
U.S. ATTORNEY'S SDNY

Civil Action No. _____

**COMPLAINT FOR WRIT OF MANDAMUS
AND, IN THE ALTERNATIVE, PETITION FOR HEARING
ON NATURALIZATION APPLICATION**

Plaintiff, by his attorneys, WILDES & WEINBERG, P.C., hereby alleges, upon
information and belief, as follows:

INTRODUCTION

1. This is a civil action brought by Plaintiff, Mr. Marc Malek, a lawful permanent resident

of the United States, to compel Defendants to take action on his Application for Naturalization (Form N-400). The application was filed with the U.S. Citizenship and Immigration Service ("USCIS") on December 9, 2005, and he was interviewed on April 4, 2006, by Immigration Officer Tran and successfully passed the English language and history and government tests but his application has not yet been adjudicated. Defendants have improperly delayed processing the application to Plaintiff's detriment.

2. In the alternative, as USCIS has failed to make a determination on Plaintiff's application before the end of the 120-day period after the date on which his examination was conducted, Plaintiff requests that this Court conduct a hearing on his naturalization application pursuant to 8 U.S.C. § 1447(b). Plaintiff's examination was conducted on April 4, 2006, and more than 365 days have passed without a determination on his application.

JURISDICTION

3. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1361 (*mandamus*).
4. The action seeks to compel the Defendants and those acting under them, pursuant to 28 U.S.C. § 1361, to perform their statutory duty to Plaintiff to adjudicate his application for immigration benefits, which the Defendants have failed to adjudicate.
5. Under 28 U.S.C. § 1361, "(t)he district courts shall have original jurisdiction of any action in the nature of *mandamus* to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff."
6. In addition, this Court has federal question jurisdiction over this action pursuant to 28

U.S.C. § 1331. Under 28 U.S.C. § 1331, “(t)he district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.”

7. This Court has jurisdiction over this action under 28 U.S.C. § 1331 because it arises under the Administrative Procedure Act (“APA”) (5 U.S.C. §§ 702 and 704), and under the Immigration and Nationality Act (“INA”) and regulations implementing it (title 8 of the C.F.R.).
8. Under 5 U.S.C. § 702, “[a] person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute is entitled to judicial review thereof.” Mr. Malek has been adversely affected by the Defendants’ failure to adjudicate his application.
9. Under 5 U.S.C. § 704, “final agency action for which there is no other adequate remedy in a court [is] subject to judicial review.” There is no other adequate remedy for the defendants’ failure to adjudicate plaintiff’s application other than the instant action.
10. This action arises under the INA and the regulations implementing it because Mr. Malek is seeking immigration benefits that are governed by the INA and its regulations.
11. Jurisdiction is not precluded by INA § 242(a)(2)(B)(ii), 8 U.S.C. § 1252(a)(2)(B)(ii), because this matter does not involve judicial review of an action of Defendants relating to an act of discretion. Rather, this action seeks review of the Defendants’ failure to take action on applications that they are required to perform by law.
12. In the alternative, this Court has jurisdiction over this action pursuant to INA § 336(b), 8 U.S.C. § 1447(b). Under this provision, “[i]f there is a failure to make a determination under section 1446 of this title before the end of the 120-day period after the date on

which the examination is conducted under such section, the applicant may apply to the United States district court for the district in which the applicant resides for a hearing on the matter. Such court has jurisdiction over the matter and may either determine the matter or remand the matter, with appropriate instructions, to the Service to determine the matter.”

VENUE

13. Venue of this action is proper under 28 U.S.C. § 1391(e)(3) because Plaintiff resides in this judicial district, and no real property is involved in this action.
14. Venue of this action is also proper under 8 U.S.C. § 1447(b), which provides that an applicant for naturalization may apply to the United States district court for the district in which he resides for a hearing on the matter. Plaintiff resides in this judicial district.

PARTIES

15. Plaintiff Marc MALEK, resides at 265 E. 66th St., New York, NY 10021. He is an applicant for naturalization having filed an N-400, Application for Naturalization on December 9, 2005 with the United States Citizenship and Immigration Service. (“USCIS”).
16. Defendant Andrea Quarantillo is sued in her official capacity only. She is the New York City District Director of the United States Citizenship and Immigration Services. As such, she is the Department of Homeland Security Secretary’s designate for the New York City District, charged with the duty of administration and enforcement of all the functions, powers, and duties of the USCIS. Plaintiff was interviewed at the USCIS New York District office on April 4, 2006.
17. Defendant Emilio T. Gonzales is the Director of USCIS and is sued in his official

capacity only. Defendant Gonzales is charged with the administration of USCIS, a bureau within the Department of Homeland Security, and implementation of the Immigration and Nationality Act, 8 U.S.C. §§ 1101, et seq. 8 C.F.R. § 100.2(a).

18. Defendant Michael Chertoff is the Secretary of the Department of Homeland Security and is sued in his official capacity only. All authorities and functions of the Department of Homeland Security to administer and enforce the immigration laws are vested in the Secretary of Homeland Security. Defendant Chertoff is further authorized to delegate such powers and authority to subordinate employees of the DHS. 8 U.S.C. §1103(a); 8 C.F.R. § 2.1.
19. Defendant Alberto R. Gonzales is the Attorney General of the United States and is sued in his official capacity only. Defendant Gonzales is charge with the administration of the Department of Justice, including the Federal Bureau of Investigation.
20. Defendant Robert S. Mueller, III, is the Director of the Federal Bureau of Investigations (FBI) and is sued in his official capacity only. Defendant Mueller is charged with the administration of the FBI, the law enforcement agency that conducts security clearances for other U.S. government agencies, such as the Department of State and USCIS. As will be shown, Defendant has failed to complete the security clearances on Plaintiff's case.

FACTS

21. Plaintiff, Marc MALEK, is a native of Lebanon and citizen of Lebanon. On November 25, 1998, Mr. Malek became a lawful permanent resident of the United States.(See Ex. 1)
22. Plaintiff resides at 265 East 66th St., New York, NY 10021. Plaintiff married Maya Lorenz on August 31, 2002. Plaintiff resides with his wife and their two United States Citizen children, Gabriela Rita Malek, born January 16, 2004, and Karl Anthony Malek,

born September 8, 2005.

23. Plaintiff is managing partner at Conquest Capital Group located at 540 Madison Avenue, 20th Flr, New York, NY 10022.

24. Plaintiff, Marc Malek filed an application for naturalization (Form N-400) with the United States Citizenship and Immigration Service(USCIS) on December 9, 2005.

25. On 12/16/2005, USCIS issued a receipt notice for Marc Malek's I-589 application which misspelled his name as "Mare" Malek. This was a spelling error on the part of USCIS as Mr. Marc Malek's name was correctly spelled on his N-400 application for naturalization. (See Ex. 3)

26. On 12/27/2005, Wildes & Weinberg P.C. sent USCIS a letter asking them to correct the spelling of Marc Malek's name.

27. On 12/28/2005, USCIS issued a Fingerprint Notification in the name of "Mare" Malek. This notice directed Mr. Malek to have his fingerprints taken on 1/11/2006 at 201 Varick St., NY, NY 10014. (See Ex. 4)

28. Mr. Malek appeared for his fingerprint appointment with USCIS on or about 1/11/2006. On this date, he corrected the spelling of his name with USCIS personnel.

29. On February 9, 2006, USCIS issued an interview notice in the name of Marc Malek. The interview notice correctly spelled Mr. Marc Malek's name. The interview notice indicated that Mr. Malek was scheduled to appear for a naturalization interview at the New York District Office of USCIS located at 26 Federal Plaza, 7th Flr., New York, NY 10278 on Tuesday, April 4, 2006. (See Ex. 5)

30. On April 4, 2006, Plaintiff appeared for a Naturalization interview before District Adjudications Officer ("DAO") Tran, at the USCIS New York District Office, 26 Federal

Plaza, New York, New York 10278. All requested documentation was presented at the interview. Plaintiff took the Naturalization Examination on U.S. History and government. DAO Tran indicated that Plaintiff's name was correctly spelled in the computer.

31. DAO Tran said that Mr. Malek's security checks were performed under the misspelled name of Mare Malek rather than Marc Malek. DAO Tran informed Mr. Malek that his security checks would have to be run again under the name, Mark Malek. DAO Tran estimated that this name check should take only one more month from the date of interview.
32. DAO Tran gave Mr. Malek form N-652 indicating that Mr. Malek had passed the tests of English and U.S. history and government and that he would receive a written decision on his application for naturalization. (See Ex. 2).
33. On May 9, 2006, Wildes & Weinberg, P.C., hand delivered a letter to USCIS requesting that Plaintiff's application be granted. USCIS did not respond to the letter. (See Ex. 6).
34. On June 21, 2006, Wildes & Weinberg, P.C., hand delivered an additional letter to USCIS requesting that Plaintiff's naturalization application be approved. (See Ex. 7).
35. On August 8, 2006, Wildes & Weinberg, P.C., hand delivered an additional letter to USCIS requesting that Plaintiff's naturalization application be approved. No responses were received from USCIS regarding Plaintiff's naturalization application. (See Ex. 8).
36. Plaintiff also enlisted the help of Senator Charles Schumer's office in requesting completion of Mr. Malek's case but this has also not yielded any results.
37. Pursuant to an April 25, 2006, "Fact Sheet" issued by USCIS (available at www.uscis.gov), the agency utilizes three background check mechanisms for cases

involving an application for immigration benefits: the Interagency Border Inspection System ("IBIS") Name Check, an FBI Fingerprint Check, and an FBI Name Check. According to the Fact Sheet, results of an IBIS check are usually available immediately; the FBI generally forwards responses to fingerprint checks within 24-48 hours; and responses to an FBI name check take approximately two weeks in 80% of cases. The Fact Sheet further notes that in approximately 20% of cases, FBI name checks may take up to six months, and less than 1% of those cases remain pending for more than six months. (See Ex. 9).

38. It has now been over one year since Plaintiff was interviewed by DAO Tran. Plaintiff, through counsel, has made requests to determine the status of his application and the delays associated with the approval of the application. Plaintiff is still waiting for approval of his naturalization application and final swearing in at an oath ceremony.

CLAIMS FOR RELIEF

39. The allegations contained in paragraphs 1 through 38 above are repeated and realleged as though fully set forth herein.

40. As a Lawful Permanent Resident of the United States, Plaintiff is entitled by law to receive a final decision on his properly filed naturalization application.

41. Defendants and those acting under them are under a nondiscretionary duty to adjudicate Plaintiff's application, and Defendants have unreasonably failed to perform that duty.

42. Plaintiff has complied with all of the requirements for obtaining naturalization, and he is fully eligible to be granted United States Citizenship.

43. When the Agency fails to make a decision on the Naturalization application within 120 days after examination, a naturalization applicant may ask the United States District

Court to intervene and adjudicate that application. 8 U.S.C. § 1447(b). The majority of courts consider the examination referred to as the initial interview scheduled under 8 U.S.C. § 1447(b). *See, e.g. U.S.A. V. Hovseian*, 359 F.3d 1144, 1151 (9th Cir. 2004).

44. Defendants and those acting under them are charged by law with the statutory obligation to adjudicate naturalization applications. Defendants owe Plaintiff a non-discretionary duty to adjudicate his application for naturalization, and have unreasonably failed to perform that duty. *See generally Przhebelskaya v. U.S. Citizenship and Immigration Services*, 338 F.Supp 2d 399, 405 (E.D.N.Y. 2004) (citing, with approval, cases holding that USCIS has a duty to adjudicate applications for adjustment of status in a reasonable period of time). Under the circumstances presented in this case, a period of over one year to conduct a routine background check constitutes an unreasonable amount of time.
45. Defendants have deprived Plaintiff of all of the benefits of becoming a Citizen of the United States, and have deprived Plaintiff of the peace of mind that he is entitled to.
46. The delay in processing the applications is not in any way attributable to Plaintiff.
47. By making numerous inquiries on his naturalization application to no avail, Plaintiff has exhausted any administrative remedies that may exist. No other remedy exists to resolve Defendants' delay and refusal to act on Plaintiff's naturalization application.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays this Honorable Court to grant the following relief:

1. Assume jurisdiction over the case and naturalize the Plaintiff under the terms of 8 USC 1447(b); or
2. Compel Defendants and those acting under them to perform their duty to adjudicate the Petition; and
3. Compel Defendant, Federal Bureau of Investigation to complete the security checks on Plaintiff by August 14, 2008, 90 days from the filing of this mandamus action; and

4. Grant such other and further relief as this Court deems proper under the circumstances.

Dated: May 11, 2007

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Th. Vanasse', is written over a horizontal line.


Thomas Vanasse (TV 1213)
Attorney for the Plaintiffs
Wildes & Weinberg P.C.
515 Madison Avenue
New York, NY 10022
(212) 753-3468

VERIFICATION

Thomas W. Vanasse, under penalty of perjury, states that the following:

1. That I am an attorney admitted to practice before this Court. I am an associate attorney in the firm Wildes & Weinberg, P.C., the attorneys for the Plaintiffs of the foregoing Complaint.
2. I affirm the truth of the contents of the foregoing Complaint upon information and belief. The sources of my information and belief are documents provided to me by, and conversations with, the Plaintiff.

Dated: New York, New York
May 11, 2007


Thomas W. Vanasse, Esq.

PERMANENT RESIDENT CARD

NAME MALEK, MARC H

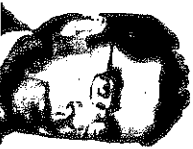
INS A # 046-704-281

Birthdate 07/14/69 Category E13 Sex M

Country of Birth Lebanon

CARD EXPIRES 03/18/10

Resident Since 11/25/98



EXHIBIT

tabbies®

C1USA0467042819EAC0005053912<<

Department of Homeland Security
U.S. Citizenship and Immigration Services

N-652, Naturalization Interview Results

A#: 46 704 281

On 4/4/06, you were interviewed by USCIS officer TRAN

- ☒ You passed the tests of English and U.S. history and government.
- ☐ You passed the tests of U.S. history and government and the English language requirement was waived.
- ☐ USCIS has accepted your request for a Disability Exception. You are exempted from the requirement to demonstrate English language ability and/or a knowledge of U.S. history and government.
- ☐ You will be given another opportunity to be tested on your ability to _____ speak/_____ read/_____ write _____ English.
- ☐ You will be given another opportunity to be tested on your knowledge of U.S. history and government.
- ☐ Please follow the instructions on Form N-14.
- ☒ USCIS will send you a written decision about your application.
- ☐ You did not pass the second and final test of your _____ English ability/ _____ knowledge of U.S. history and government. You will not be rescheduled for another interview for this Form N-400. USCIS will send you a written decision about your application.
- A) _____ Congratulations! Your application has been recommended for approval. At this time it appears that you have established your eligibility for naturalization. If final approval is granted, you will be notified when and where to report for the Oath Ceremony.

B) _____ A decision cannot yet be made about your application.

It is very important that you:

- ☒ Notify USCIS if you change your address
- ☒ Come to any scheduled interview.
- ☒ Submit all requested documents.
- ☒ Send any questions about this application in writing to the officer named above. Include your full name, Alien Registration Number (A#), and a copy of this paper.
- ☒ Go to any Oath Ceremony that you are scheduled to attend.
- ☒ Notify USCIS as soon as possible in writing if you cannot come to any scheduled interview or Oath Ceremony. Include a copy of this paper and a copy of the scheduling notice.

NOTE: Please be advised that under section 336 of the Immigration and Nationality Act, you have the right to request a hearing before an immigration officer if your application is denied, or before the U.S. district court if USCIS had not made a determination on your application within 120 days of the date of your examination.

EXHIBIT

2

Form N-652 (Rev. 01/14/05)N



Receipt			NOTICE DATE December 16, 2005
CASE TYPE N400 Application For Naturalization			INS A# A 046 704 281
APPLICATION NUMBER ESC*001533191	RECEIVED DATE December 09, 2005	PRIORITY DATE December 09, 2005	PAGE 1 of 1

APPLICANT NAME AND MAILING ADDRESS

MARE MALEK
c/o MICHAEL J WILDES
WILDES AND WEINBERG PC
515 MADISON AVE 8TH FLOOR
NEW YORK NY 10022

PAYMENT INFORMATION:

Single Application Fee: \$400.00
Total Amount Received: \$400.00
Total Balance Due: \$0.00

The above application has been received by our office and is in process. Our records indicate your personal information is as follows:

Date of Birth: July 14, 1969
Address Where You Live: 265 E 66TH STREET #42E
NEW YORK NY 10021

Please verify your personal information listed above and immediately notify our office at the address or phone number listed below if there are any changes.

You will be notified of the date and place of your interview when you have been scheduled by the local INS office. You should expect to be notified within 540 days of this notice.

If you have any questions or comments regarding this notice or the status of your case, please contact our office at the below address or customer service number. You will be notified separately about any other cases you may have filed.

If you have other questions about possible immigration benefits and services, filing information, or INS forms, please call the INS National Customer Service Center (NCSC) at 1-800-375-5283. If you are hearing impaired, please call the NCSC TDD at 1-800-767-1833.

If you have access to the Internet, you can also visit INS at www.ins.usdoj.gov. Here you can find valuable information about forms and filing instructions, and about general immigration services and benefits. At present, this site does not provide case status information.

INS Office Address:

US IMMIGRATION AND NATURALIZATION SERVICE
75 LOWER WELDEN STREET
ST ALBANS VT 05479-

INS Customer Service Number:

(800) 375-5283

REPRESENTATIVE COPY

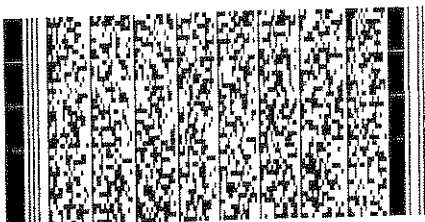

EXHIBIT

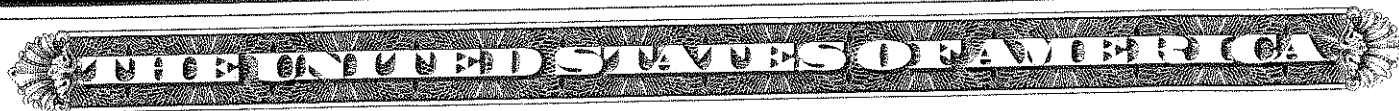
3



Form 1000 (Rev. 01/31/05) N



Fingerprint Notification			NOTICE DATE December 28, 2005
CASE TYPE N400 Application For Naturalization			INS AR A 046 704 281
APPLICATION NUMBER ESC*001533191	RECEIVED DATE December 09, 2005	PRIORITY DATE December 09, 2005	PAGE 1 of 1
APPLICANT NAME AND MAILING ADDRESS MARE MALEK c/o MICHAEL J WILDES WILDES AND WEINBERG PC 515 MADISON AVE 8TH FLOOR NEW YORK NY 10022			
<p>To process your application, INS must take your fingerprints and have them cleared by the FBI. PLEASE APPEAR AT THE BELOW APPLICATION SUPPORT CENTER AT THE APPOINTED DATE AND TIME TO HAVE YOUR FINGERPRINTS TAKEN. If you are unable to appear at this time, you may go on any following Wednesday at the same time noted below, as long as you appear before 04/05/2006. If you do not have your fingerprints taken by that date, your application will be considered abandoned.</p>			
APPLICATION SUPPORT CENTER INS NEW YORK VARICK ST. 201 VARICK STREET 1023 NEW YORK NY 10014		DATE AND TIME OF APPOINTMENT 01/11/2006 12:00 PM	
<p>WHEN YOU GO TO THE APPLICATION SUPPORT CENTER TO HAVE YOUR FINGERPRINTS TAKEN, YOU MUST BRING:</p> <ol style="list-style-type: none">1. THIS APPOINTMENT NOTICE and2. PHOTO IDENTIFICATION. Naturalization applicants must bring their Alien Registration Card. All other applicants must bring a passport, driver's license, national ID, military ID, or State-issued photo ID. If you appear without proper identification, you will not be fingerprinted.			
<p>PLEASE DISREGARD THIS NOTICE IF YOUR APPLICATION HAS ALREADY BEEN GRANTED.</p>			
<p>WARNING!</p> <p><i>Due to limited seating availability in our lobby areas, only persons who are necessary to assist with transportation or completing the fingerprint worksheet should accompany you.</i></p>			
<p>If you have any questions regarding this notice, please feel free to call 1-800-375-5283.</p>			
<p>REPRESENTATIVE COPY</p> 			
<div style="border: 2px solid black; padding: 5px; display: inline-block;"><div style="text-align: center;">EXHIBIT 4</div><div style="text-align: center;">tabbies</div></div>			

Form I-797C (Rev. 01/31/05) N

LAW OFFICES

WILDES & WEINBERG, P.C.

515 Madison Avenue

New York, New York 10022

LEON WILDES
STEVEN L. WEINBERG
MICHAEL J. WILDES*
ROXANNE H. LEVINE

(212) 753-3468

(212) 759-9771

AMY M. WILDES**
RAFAEL A. BARRETO
TRACEY E. NEHMAD**
KARIN WOLMAN
SYLVIA M. MONTAN**
MIN-HUI YE
KAHA KVACHATADZE
THOMAS W. VANASSE***
EVA S. RUBINSON****

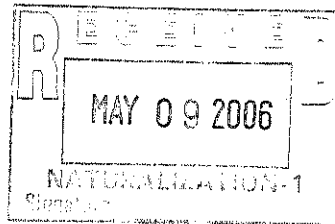
FACSIMILE
(212) 753-3866

E-MAIL
INFO@WILDESWEINBERG.COM

* ALSO ADMITTED TO PRACTICE IN NY & DC
** ALSO ADMITTED TO PRACTICE IN NJ
*** ALSO ADMITTED TO PRACTICE IN CT
**** ALSO ADMITTED TO PRACTICE IN CT & DC

May 9, 2006

ATTN: DAO TRAN
Section N-400/ 7th Floor
USCIS
26 Federal Plaza
New York, New York 10278



RE: Marc MALEK, A46 704 281
Date of Interview: April 4, 2006

Dear Officer Tran:

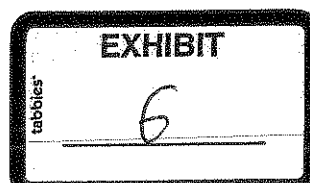
This office represents Marc Malek with respect to his application for naturalization. You interviewed Mr. Malek in your office on April 4, 2006. At the interview, Mr. Malek passed his exams and all requested documents were provided.

However, you discovered that a security check had been performed using an incorrect spelling of Mr. Malek's first name ("Mare" instead of "Marc"). At that time, you estimated that it would take one month for you to obtain new security clearances. I am therefore writing to you at this time to inquire whether the security check has been completed so that Mr. Malek's naturalization application can be approved.

Please process Mr. Malek's case as soon as you are able. If you have any questions or require any additional information, please do not hesitate to contact me.

Sincerely,

Sharman Leventon, Esq.



LAW OFFICES
WILDES & WEINBERG, P.C.
515 Madison Avenue
New York, New York 10022

LEON WILDES
STEVEN L. WEINBERG
MICHAEL J. WILDES*
ROXANNE H. LEVINE

(212) 753-3468
(212) 759-9771

AMY M. WILDES**
RAFAEL A. BARRETO
TRACEY E. NEHMAD**
KARIN WOLMAN
SYLVIA M. MONTAN**
MIN-HUI YE
THOMAS W. VANASSE***
CHRISTOPHER W. BASAMAN****
SHARMAN M. LEVENTON*****
STACEY SIMON**

* ALSO ADMITTED TO PRACTICE IN NJ & DC
** ALSO ADMITTED TO PRACTICE IN NJ
*** ALSO ADMITTED TO PRACTICE IN CT
**** ONLY ADMITTED TO PRACTICE IN NJ
***** ONLY ADMITTED TO PRACTICE IN PA

FACSIMILE
(212) 753-3866

E-MAIL
INFO@WILDESWEINBERG.COM

June 21, 2006

ATTN: Supervisory District Adjudications Officer Jimmie Ortega
Section N-400/ 7th Floor
USCIS
26 Federal Plaza
New York, New York 10278

RE: Marc MALEK, A46 704 281
Date of Interview: April 4, 2006
Second Inquiry

Dear Officer Ortega:

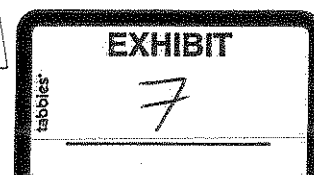
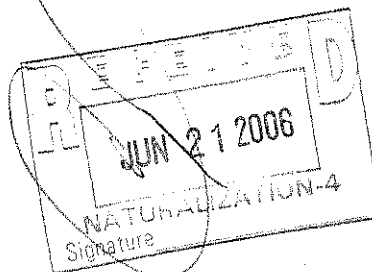
This office represents Marc Malek with respect to his application for naturalization. Officer Tran interviewed Mr. Malek in your section on April 4, 2006. At the interview, Mr. Malek passed his exams and all requested documents were provided.

However, Officer Tran discovered that a security check had been performed using an incorrect spelling of Mr. Malek's first name ("Mare" instead of "Marc"). At that time, Officer Tran estimated that it would take one month to obtain new security clearances. On May 9, 2006, I submitted a letter to Officer Tran inquiring on the status of Mr. Malek's application, but I have not to date received a response. I am therefore writing to you to again inquire whether the security check has been completed so that Mr. Malek's naturalization application can be approved.

Please process Mr. Malek's case as soon as possible. If you have any questions or require any additional information, please do not hesitate to contact me. Thank you in advance for your assistance in this matter.

Sincerely,


Sharman Leventon, Esq.



LAW OFFICES
WILDES & WEINBERG, P.C.
515 Madison Avenue
New York, New York 10022

LEON WILDES
STEVEN L. WEINBERG
MICHAEL J. WILDES*
ROXANNE H. LEVINE

(212) 753-3468
(212) 759-9771

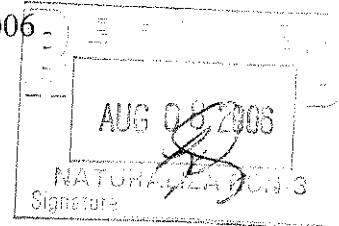
AMY M. WILDES**
RAFAEL A. BARRETO
TRACEY E. NEHMAD**
KARIN WOLMAN
SYLVIA M. MONTAN**
MIN-HUI YE
KAHA KVACHATADZE
THOMAS W. VANASSE***
EVA S. RUBINSON****

* ALSO ADMITTED TO PRACTICE IN NJ & DC
** ALSO ADMITTED TO PRACTICE IN NJ
*** ALSO ADMITTED TO PRACTICE IN CT
**** ALSO ADMITTED TO PRACTICE IN CT & DC

FACSIMILE
(212) 753-3866

E-MAIL
INFO@WILDESWEINBERG.COM

August 8, 2006



ATTN: Supervisory District Adjudications Officer Jimmie Ortega
Section N-400/ 7th Floor
USCIS
26 Federal Plaza
New York, New York 10278

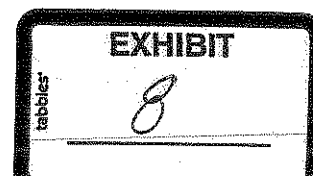
RE: Marc MALEK, A46 704 281
Date of Interview: April 4, 2006
Third Inquiry

Dear Officer Ortega:

This office represents Marc Malek with respect to his application for naturalization. Officer Tran interviewed Mr. Malek in your section on April 4, 2006. At the interview, Mr. Malek passed his exams and all requested documents were provided.

However, Officer Tran discovered that a security check had been performed using an incorrect spelling of Mr. Malek's first name ("Mare" instead of "Marc"). At that time, Officer Tran estimated that it would take one month to obtain new security clearances. On May 9, 2006, I submitted a letter to Officer Tran inquiring on the status of Mr. Malek's application, but I did not receive a response. On June 21, 2006, I submitted a letter addressed to you inquiring whether the security check has been completed so that Mr. Malek's naturalization application can be approved.

It has now been more than 120 days since Mr. Malek was interviewed in support of his naturalization application, and USCIS has not yet made a determination on his application. See generally section 336(b) of the Immigration and Nationality Act, 8 U.S.C. § 1447(b) (providing that if there is a failure to make a determination before the end of the 120-day period after the date on which the examination is conducted, the applicant may apply to the United States district court for a hearing on the matter).



Please make a determination on Mr. Malek's application as soon as possible. If you have any questions or require any additional information, please do not hesitate to contact me. Thank you in advance for your assistance in this matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Sharman Leventon".

Sharman Leventon, Esq.

USINFO.STATE.GOV

Close

Understanding the Immigration Security Process

Homeland Security fact sheet explains security checks for immigration benefit applicants

An explanation of the immigration security check system was issued by the U.S. Citizenship and Immigration Services April 25 in response to some applicant frustration about delays in the process.

All applicants for a U.S. immigration benefit are subject to criminal and national security background checks to ensure they are eligible for that benefit. The agency acknowledges a small number of delays, but assures the public they are not based on race, ethnicity, religion or national origin.

For related information, see *Visas, Passports and Immigration*.

The text of the fact sheet follows:

U.S. Department of Homeland Security
Fact Sheet
April 25, 2006

Immigration Security Checks—How and Why the Process Works

Background

All applicants for a U.S. immigration benefit are subject to criminal and national security background checks to ensure they are eligible for that benefit. U.S. Citizenship and Immigration Services (USCIS), the Federal agency that oversees immigration benefits, performs checks on every applicant, regardless of ethnicity, national origin or religion.

Since 2002, USCIS has increased the number and scope of relevant background checks, processing millions of security checks without incident. However, in some cases, USCIS customers and immigrant advocates have expressed frustration over delays in processing applications, noting that individual customers have waited a year or longer for the completion of their adjudication pending the outcome of security checks. While the percentage of applicants who find their cases delayed by pending background checks is relatively small, USCIS recognizes that for those affected individuals, the additional delay and uncertainty can cause great anxiety. Although USCIS cannot guarantee the prompt resolution of every case, we can assure the public that applicants are not singled out based on race, ethnicity, religion, or national origin.

USCIS strives to balance the need for timely, fair and accurate service with the need to ensure a high level of integrity in the decision-making process. This fact sheet outlines the framework of the immigration security check process, explaining its necessity, as well as factors contributing to delays in resolving pending cases.

Why USCIS Conducts Security Checks

USCIS conducts security checks for all cases involving a petition or application for an immigration service or benefit. This is done both to enhance national security and ensure the integrity of the immigration process. USCIS is responsible for ensuring that our immigration system is not used as a vehicle to harm our nation or its citizens by screening out people who seek immigration benefits improperly or fraudulently. These security checks have yielded information about applicants involved in violent crimes, sex crimes, crimes against children, drug trafficking and individuals with known links to terrorism. These investigations require time, resources, and patience and USCIS recognizes that the process is slower for some customers than they would like. Because of that, USCIS is working closely with the FBI and other agencies to speed the background check process. However, USCIS will never grant an immigration service or benefit before the required security checks are completed regardless of how long those checks take.

How Immigration Security Checks Work

To ensure that immigration benefits are given only to eligible applicants, USCIS adopted background security check procedures that address a wide range of possible risk factors. Different kinds of applications undergo different levels of scrutiny. USCIS normally uses the following three background check mechanisms but maintains the authority to conduct other background investigations as necessary:

- The Interagency Border Inspection System (IBIS) Name Check— IBIS is a multi-agency effort with a central system that combines information from multiple agencies, databases and system interfaces to compile data relating to national security risks, public safety issues and other law enforcement concerns. USCIS can quickly check information from these multiple government agencies to determine if the information in the system affects the adjudication of the case. Results of an IBIS check are usually

available immediately. In some cases, information found during an IBIS check will require further investigation. The IBIS check is not deemed completed until all eligibility issues arising from the initial system response are resolved.

- **FBI Fingerprint Check**—FBI fingerprint checks are conducted for many applications. The FBI fingerprint check provides information relating to criminal background within the United States. Generally, the FBI forwards responses to USCIS within 24-48 hours. If there is a record match, the FBI forwards an electronic copy of the criminal history (RAP sheet) to USCIS. At that point, a USCIS adjudicator reviews the information to determine what effect it may have on eligibility for the benefit. Although the vast majority of inquiries yield no record or match, about 10 percent do uncover criminal history (including immigration violations). In cases involving arrests or charges without disposition, USCIS requires the applicant to provide court certified evidence of the disposition. Customers with prior arrests should provide complete information and certified disposition records at the time of filing to avoid adjudication delays or denial resulting from misrepresentation about criminal history. Even expunged or vacated convictions must be reported for immigration purposes.

- **FBI Name Checks**—FBI name checks are also required for many applications. The FBI name check is totally different from the FBI fingerprint check. The records maintained in the FBI name check process consist of administrative, applicant, criminal, personnel and other files compiled by law enforcement. Initial responses to this check generally take about two weeks. In about 80 percent of the cases, no match is found. Of the remaining 20 percent, most are resolved within six months. Less than one percent of cases subject to an FBI name check remain pending longer than six months. Some of these cases involve complex, highly sensitive information and cannot be resolved quickly. Even after FBI has provided an initial response to USCIS concerning a match, the name check is not complete until full information is obtained and eligibility issues arising from it are resolved.

For most applicants, the process outlined above allows USCIS to quickly determine if there are criminal or security related issues in the applicant's background that affect eligibility for immigration benefits. Most cases proceed forward without incident. However, due to both the sheer volume of security checks USCIS conducts, and the need to ensure that each applicant is thoroughly screened, some delays on individual applications are inevitable. Background checks may still be considered pending when either the FBI or relevant agency has not provided the final response to the background check or when the FBI or agency has provided a response, but the response requires further investigation or review by the agency or USCIS. Resolving pending cases is time-consuming and labor-intensive; some cases legitimately take months or even several years to resolve. Every USCIS District Office performs regular reviews of the pending caseload to determine when cases have cleared and are ready to be decided. USCIS does not share information about the records match or the nature or status of any investigation with applicants or their representatives.

Created: 03 May 2006 Updated: 03 May 2006

This page printed from: <http://usinfo.state.gov/gi/Archive/2006/May/04-878088.html>

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

-----X	:
Marc Malek (A46 704 281)	:
	:
Plaintiff,	:
	:
-against-	:
	:
ANDREA J. QUARANTILLO, Director,	:
New York City District, United States	:
Citizenship and Immigration Services;	:
EMILIO T. GONZALES, Director, United	:
States Citizenship and Immigration Services;	:
MICHAEL CHERTOFF, Secretary,	:
Department of Homeland Security;	:
ALBERTO R. GONZALES, Attorney	:
General of the United States;	:
ROBERT S. MUELLER, III, Director,	:
Federal Bureau of Investigations,	:
	:
Defendants.	:
-----X	:

Civil Action No. _____

COMPLAINT

THOMAS W. VANASSE
SDNY Bar#TV1213
Wildes & Weinberg P.C.
515 Madison Ave.
New York, NY 10022
Phone: (212) 753-3468
Fax: (212) 753-3866
tvanasse@wildesweinberg.com